



## *Report to the Auburn City Council*

Action Item

3

Agenda Item No.

City Manager's Approval

**To:** Honorable Mayor and City Council Members  
**From:** Robert Richardson, City Manager  
**Date:** January 21, 2014  
**Subject:** Assignment/Assumption and Amendment of the Auburn Airport Industrial Park Land Lease at 12740 Earhart Ave., currently held by Miltenyi Biotec, Inc. to Kenneth Lynn and Margery Ann Cook, co-trustees of the Cook Family Trust U/A dated March 11, 2010.

### *The Issue*

Shall the City Council consent to the assignment/assumption of and amendment to the existing land lease, previously assigned and currently held by Miltenyi Biotec, Inc., to Kenneth Lynn and Margery Ann Cook, co-trustees of the Cook Family Trust, who intend to do business at the location as KenMar Instrumentation Services, LLC, and KM Sensors LLC and further authorize the execution of the related document? The amendment portion of the assignment lengthens the existing lease by a period of approximately 7 years, such that the lease would expire on March 10, 2049. This action authorizes the execution of three (3) Lessor's Consent of Leasehold Deed of Trust documents, relating to financing of the site's improvement purchase.

### *Conclusions and Recommendations*

By **RESOLUTION**, authorize the City Manager or his designee to approve the assignment/assumption and amendment of the subject land lease between the City of Auburn and the Cook Family Trust and authorize the execution of all related documents.

### *Background*

On February 10, 1992, the City of Auburn, as Lessor, entered into a lease with Aspect Electronics, Inc., as Lessee, for the lease of land commonly known as 12740 Earhart Ave, Auburn, CA, for a term of fifty (50) years. Subsequently, on or about November 22, 1999, the lease was assigned to the Assignor, Miltenyi Biotec, Inc. The assignment to Miltenyi Biotec, Inc. included a lease termination date consistent with the original lease, that being February 10, 2042.

**Analysis**

As a means to facilitate the assignment of the lease, Kenneth and Margery Cook, on behalf of the Cook Family Trust, have requested the City's consent to the assignment of and amendment to the leasehold interests for the above referenced premises to the Cook Family Trust U/A dated March 11, 2010 (trust). The premises will house two operating companies, as sublessees to the trust and privately held by Kenneth and Margery Cook, known as KenMar Instrument Services and KM Sensors. The amendment portion of the assignment/amendment generates a lease termination extension of approximately seven (7), thus terminating on March 10, 2049, for refinancing purposes.

Additionally, due to the financing, both a bank and an underwriter have requested the approval and execution of three Lessor's Consent of Leasehold Deed of Trust documents.

Finally, in addition to the City's approval of the lease assignment, assumption, lease extension and Lessor's Consent of Leasehold Deed of Trust documents, staff recommends the City consent to the execution of any related documents including the recording, by the Placer County Recorder's Office, of memoranda of lease for the affected parcel, if necessary.

**Alternatives Available to Council; Implications of Alternatives**

1. Adopt a resolution authorizing the City Manager or his designee to approve the assignment/assumption and lease amendment of the land lease between the City of Auburn and the Cook Family Trust U/A dated March 11, 2010 and further authorize the execution of all related documents.
2. Do not adopt the resolutions and direct staff accordingly.

**Fiscal Impact**

None. The current monthly lease amount will be assumed by the assignee to the lease.

Attachments – Assignment of and Amendment to Lease

Resolution

1 RESOLUTION NO. 14-

2 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN  
3 APPROVING THE ASSIGNMENT AND ASSUMPTION AND AMENDMENT OF THE  
4 SUBJECT LAND LEASE FOR THE COOK FAMILY TRUST  
-----

5 THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

6  
7 That the City Council of the City of Auburn hereby authorizes the City Manager  
8 or his designee to approve the assignment/assumption and amendment of the  
9 subject land lease between the City of Auburn and the Cook Family Trust and  
10 authorize the execution of all related documents.

11 DATED: January 27, 2014

12  
13  
14 \_\_\_\_\_  
Bridget Powers, Mayor

15 ATTEST:

16 \_\_\_\_\_  
Stephanie L. Snyder, City Clerk

17  
18 I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify  
19 that the foregoing resolution was duly passed at a regular meeting of the City  
20 Council of the City of Auburn held on the 27th day of January, 2014 by the  
21 following vote on roll call:

22 Ayes:

23 Noes:

24 Absent:

25 \_\_\_\_\_  
Stephanie L. Snyder, City Clerk

**RECORDING REQUESTED BY  
AND  
WHEN RECORDED RETURN TO:**

Kenneth L. Cook  
Margery A. Cook  
12740 Earhart Avenue  
Auburn, CA 95603

---

**ASSIGNMENT OF AND AMENDMENT TO  
AUBURN AIRPORT INDUSTRIAL PARK INDUSTRIAL SITE LEASE**

This ASSIGNMENT OF AND AMENDMENT TO LEASE ("Amendment"), dated as of \_\_\_\_\_, 2014 (the "Effective Date"), is made by and among the City of Auburn, a municipal corporation ("City"), Miltenyi Biotec, Inc., a California corporation ("Assignor"), and Kenneth Lynn Cook and Margery Ann Cook, co-trustees of the Cook Family Trust under agreement dated March 11, 2010 ("Assignee" or "Lessee").

**RECITALS**

A. City of Auburn, a Municipal Corporation, as Lessor, and Aspect Electronics, Inc. as lessee executed that certain Auburn Airport Industrial Park Industrial Site Lease ("Original Lease") on February 10, 1992, for the lease of Leased Premises commonly known as 12740 Earhart Avenue, Lot #31, Auburn, California, as more particularly described on Exhibit A hereto. A memorandum of the Original Lease was recorded on March 24, 1992, as Instrument No. 92-022966, in the official records of Placer County, California. By the terms of the Original Lease the Leased Premises were leased to Aspect Electronics, Inc. as lessee for a term of fifty (50) years, commencing on February 10, 1992, and ending on February 10, 2042.

B. The Original Lease was assigned on or about November 22, 1999, to Assignor, which assignment was recorded December 27, 1999, as Instrument No. 99-109696 (as assigned, the "Lease").

C. Capitalized terms when used herein shall have the meanings ascribed to them in the Lease unless expressly defined otherwise herein.

D. By this Amendment, the parties intend to assign this Lease and extend the term of the Lease as provided herein.

THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Effectiveness. This Amendment shall be effective as of the Effective Date.
2. Assignment, Assumption and Consent - Lease. Assignor hereby assigns and delegates to Assignee, and Assignee hereby accepts and assumes from Assignor, all of Assignor's rights and obligations as the "Lessee" under the Lease with respect to the Leased Premises and the improvements constructed thereon. Without limiting the foregoing, Assignee hereby agrees, for the benefit of Assignor and the City, to perform all of the obligations of the "Lessee" under Lease that relate to the Leased Premises and the improvements constructed thereon.
3. Consent of City. The City hereby consents to the assignment and delegation by Assignor, and the acceptance and assumption by Assignee, of such rights and obligations.
4. Release of Assignor. The City hereby releases and discharges Assignor from any obligations of "Lessee" under the Lease occurring on and after the Effective Date.
5. Lease Term. Paragraph 3 of the Lease is hereby deleted and replaced in its entirety by the following:
  3. Term. Subject to prior termination upon "An event of default by 'Lessee'" as hereinafter provided, the term of this Lease shall be for a period of Fifty Seven (57) years and One (1) month, commencing on February 10, 1992 and ending on the tenth (10<sup>th</sup>) day of March, 2049.
6. Fixed Rental. Section 7 of the Lease is hereby amended by adding new Sections d. and e. as follows:
  - d. Effective as of February 10, 2042 (the "Adjustment Date"), at the request of either party, the annual rental shall be adjusted to correspond with the Fair Market Rental Value ("FMRV") of the Leased Premises.
    - (1) The Fair Market Rental Value shall be established according to the following standards:
      - a. FMRV shall be the then current fair market value of rent for the Leased Premises as of that Adjustment Date, including the value added to the fair market value of Rent by virtue of the construction of the improvements constructed on the Leased Premises.
      - b. The FMRV shall be established according to the rental rates at which tenants lease comparable land for similar purposes at comparable industrial parks at the time of the adjustment.

- c. The FMRV for comparable land shall not be established by a simple averaging of rental rates, but shall be weighted in comparison to the Auburn Airport industrial park to reflect relative size, the population, the supporting and surrounding commercial development and its value, and such other factors as shall fairly compare the rental rates at each respective comparable location.
  - d. In the event the parties are unable to establish by agreement what sum represents the FMRV of the Leased Premises, it shall be determined as follows:
    - i. Within 15 days after the Adjustment Date the parties shall select a licensed appraiser, or a licensed and practicing real estate broker, who must have at least 10 years' experience and be familiar with Placer and surrounding counties. Within 15 days after selection of such neutral, each party shall submit to the neutral its determination of the FMRV together with the assumptions, calculations, methods and comparables underlying its determination. Within 15 days after receipt of both parties' determination of FMRV the independent realtor shall select one of the party's determination of FMRV, and that shall be the FMRV as of the Adjustment Date. The independent realtor shall not recalculate FMRV, nor select an FMRV between the two parties' determinations; the only authority of the independent realtor is to choose one of the parties' determination of the FMRV. The parties shall bear the cost of the independent realtor equally.
    - ii. Provided however, that if neither party requests a FMRV adjustment prior to a new Base Year, then the annual rent for the new Base Year shall be the annual rent for the prior year adjusted in accordance with the provisions of §7(c) above.
  - e. On February 10, 2047 through the end of the lease term, the annual rent shall be adjusted as provided at §7(c) above.
7. No Other Changes. Except as expressly modified by this Amendment, all other terms and conditions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

“CITY”

CITY OF AUBURN, CALIFORNIA, a  
Municipal Corporation

By: \_\_\_\_\_  
Robert Richardson  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Colantuono, City Attorney

“ASSIGNOR”

MILTENYI BIOTEC, INC., a California  
corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

“ASSIGNEE” or “LESSEE”

\_\_\_\_\_  
Kenneth Lynn Cook, co-trustee of the  
Cook Family Trust u/a March 11, 2010

\_\_\_\_\_  
Margery Ann Cook, co-trustee of the  
Cook Family Trust u/a March 11, 2010

EXHIBIT A

DESCRIPTION OF THE LEASED PREMISES

AUBURN AIRPORT INDUSTRIAL PARK, PHASE 2  
LOT # 31

All that certain real property situated In the City of Auburn, County of Placer, State of California, described as follows: A portion of the Southwest Quarter of the Northeast Quarter of Section 28, Township 13 North, Range 8 East, Mount Diablo Base and Meridian.

COMMENCING at a point which bears the following two (2) consecutive courses and distances from the Northeast corner of Section 28, Township 13 North, Range 8 East, M.D.B.M. (1) South 00 24' 08" East 2643.07 feet; (2) South 89 44' 30" West 1312.93 feet;

THENCE continuing South 89 44' 30" West 1092.94 feet to the true point of beginning; said point lying on the Southeast corner of Lot #31. Said lot shown on the unrecorded map of Auburn Airport Industrial Park Phase 2 prepared In December, 1983 by Andregg, Inc., for the City of Auburn; thence continuing South 89 44' 30" West 220.00 feet; thence North 00 03' 20" East 351.79 feet; thence North 89 44' 30" East 141.82 feet to a point at the beginning of a curve to the left; said curve having a radius of 350 feet and a delta angle of 12 40' 26"; thence along said curve 77.42 feet to the northeast corner of Lot 31; thence South 00 10' 23" East 360.31 feet to the point of beginning.

This parcel contains 1.78 acres more or less.

This parcel contains 77,537 square feet more or less.

EXHIBIT A